

## DEMOCRACY REFORM PRIMER SERIES

### Filibuster

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## Summary

The filibuster, codified as Rule XXII of the Standing Rules of the U.S. Senate, exists in the public consciousness as a Senator making a prolonged speech to halt the pace of legislation. This ‘talking filibuster’ is a popular misconception, its little brother - the modern filibuster is a slate of technical procedures that allows a Senate minority to delay or block legislation by refusing to proceed through legislative processes. While there are ways to override a potential filibuster, filibustering increases the sunk cost of policymaking by forcing lawmakers to spend days overcoming a filibuster instead of legislating. This process often eliminates bills that otherwise have the votes to pass. It’s easy to understand why many people want to reform the Senate filibuster, especially as filibusters become increasingly common. The filibuster carries an abhorrent history, used in the nineteenth century to protest federal oversight of elections in the former Confederacy and again in the mid-twentieth century to prevent the passage of anti-lynching, anti-poll tax, and civil rights bills. Broadly speaking, filibuster reform efforts have centered on four proposals: eliminating it, returning to the talking filibuster, narrowing what can be subject to a filibuster – e.g. adding new filibuster carveouts, or reimagining who gets to filibuster.

Whether it be altered or eliminated, academics studying reform agree generally there is little evidence that filibuster reform would significantly improve the Senate’s productivity and responsiveness to public opinion. The filibuster is not the only or most important source of legislative gridlock - scholars identify internal disagreement to be a much more likely cause of the Senate’s woes. If a simple majority

functioned as a bloc, legislating despite the filibuster or eliminating it, is possible. Filibuster carve-outs, especially those that have emerged in recent years – e.g. confirmation hearings to the Supreme Court, have communicated that certain priorities can motivate a majority party into action. Filibuster supporters contend that its existence incentivizes lawmakers to slow the pace of legislation and find consensus, providing political minorities with a voice in an otherwise ruthlessly majoritarian legislative process. Enemies of the filibuster are less amiable to minority interests. Contending that majorities are elected with a mandate to govern, and the minority party shouldn’t get to make that task more difficult. To those who oppose it, the Senate filibuster is an unnecessary obstacle to enacting policies that are popular with voters and central to the majority party’s agenda. Scholars acknowledge areas of truth within these critiques, by putting those bills that lack a filibuster threat on the agenda, the Senate can legislate more efficiently. But, the filibuster promotes efficiency only if filibustering is somewhat costly and Senate leaders are otherwise unable to identify bills with cross-party appeal. Filibustering indiscriminately, whether that be for political rewards or party hard lines, still reduces overall efficiency. Notwithstanding the possibility that polarization has encouraged Senate minorities to engage in obstruction, threats to filibuster do not account for a greater share of majority-party agenda failures in recent legislative sessions. Scholars suggest that a lack of cohesion within a majority limits legislation, even if the filibuster aggravates overall legislative potential.

